THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition (M/S) No. 176 of 2006

1. Balvant Singh
2. Amolak Singh,
   All sons of Sri Chanda Singh,
   R/O Narsingh Pur Arera,
   Tehsil Ramnagar, Distt. Nainital.

….. **Petitioners.**

Versus

1. Balbir Singh.
2. Gurdeep Singh
3. Indra Jeet Singh

All sons of Sri Makkhan Singh
R/O Narsingh Pur Arera
Tehsil Ramnagar, Distt. Nainital.

….. **Respondents.**

Sri H.C.Pathak, Adv., learned counsel for the petitioners.

Dated March 02, 2006.

Hon'ble B.S. Verma, J.

Heard learned counsel.

The petitioner has filed the present writ petition for setting aside the impugned order dated 15-10-2005 passed by the Additional District Judge 3rd F.T.C. Nainital in Civil Suit No. 55 of 2002 (Annexure No. 1 to the writ petition), whereby the application 47-A moved by the respondents was allowed.

Before the learned Additional District Judge, an application 47-A was moved by the defendants with the averment that the respondent nos. 1 to 3 got executed an agreement by the plaintiffs on 14.5.1996, the photo-copy of which is 29-C and the original was in possession of the plaintiffs. It was contended before the trial court by the plaintiffs that plaintiffs never executed the document, 29-C, alleged by the defendants and if such document was executed in favour of the defendants, that must be in possession of the defendants themselves. The learned Court below

after hearing the objection of the plaintiffs passed the order that if the document is in possession of the plaintiff-petitioners, they may file the same within a week. If it is not complied, the defendants were given liberty to lead secondary evidence.

Learned counsel for the petitioners argued that the secondary evidence is not admissible as per provisions of law. The impugned order of the learned trial court is innocuous order and the learned Additional District Judge, III F.T.C. passed a conditional order that if the document is in possession of the plaintiffs, then they may produce it within a week and if the document is not produced, in that case, the defendants are at liberty to produce secondary evidence.

In the facts and circumstances of the case, the argument regarding secondary evidence is pre-mature at this stage, because the secondary evidence has not yet been led by the defendant-respondents. The petitioners are at liberty to oppose the admissibility of the secondary evidence and the learned trial court shall decide this issue on merit at the time of final decision of the case.

With the said observation, the writ petition is dismissed in-limine.

(B.S. Verma, J.)

RCP